

Article 78.

Regulation of Open Fires.

§ 106-940. Purpose and findings.

The purpose of this Article is to regulate certain open burning in order to protect the public from the hazards of forest fires and air pollution and to adapt such regulation to the needs and circumstances of the different areas of North Carolina. The General Assembly finds that open burning in proximity to woodlands must be regulated in all counties to protect against forest fires and air pollution. The General Assembly further finds that in certain counties a high percentage of the land area contains organic soils or forest types which may pose greater problems of forest fire and air pollution controls, and that in counties in which a great amount of land-clearing operations is taking place on these organic soils or these forest types, additional control of open burning is required. The counties subject to the need for additional control are classified as high hazard counties for purpose of this Article. (1981, c. 1100, s. 2; 1981 (Reg. Sess., 1982), c. 1385, s. 1; 2011-145, s. 13.25(w).)

§ 106-941. Definitions.

As used in this Article:

- (1) "Department" means the Department of Agriculture and Consumer Services.
- (2) "Forest ranger" means a forest ranger designated under G.S. 106-896(3).
- (3) "Person" means any individual, firm, partnership, corporation, association, public or private institution, political subdivision, or government agency.
- (4) "Woodland" means woodland as defined in G.S. 106-904. (1981, c. 1100, s. 2; 1989, c. 727, s. 218(53); 1991 (Reg. Sess., 1992), c. 890, s. 3; 1997-443, s. 11A.119(a); 2011-145, ss. 13.25(w), (x); 2017-108, s. 12(e).)

§ 106-942. High hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties of Beaufort, Bladen, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Duplin, Gates, Hyde, Jones, Onslow, Pamlico, Pasquotank, Perquimans, Tyrrell, and Washington which are classified as high hazard counties in accordance with G.S. 106-940.

(b) It is unlawful for any person to willfully start or cause to be started any fire in any woodland under the protection of the Department or within 500 feet of any such woodland without first having obtained a permit from the Department. Permits for starting fires may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled in accordance with G.S. 106-944 or G.S. 106-946.

(c) It is unlawful for any person to willfully burn any debris, stumps, brush or other flammable materials resulting from ground clearing activities and involving more than five contiguous acres, regardless of the proximity of the burning to woodland and on which such materials are placed in piles or windrows without first having obtained a special permit from the Department. Areas less than five acres in size will require a regular permit in accordance with G.S. 106-942(b).

- (1) Prevailing winds at the time of ignition must be away from any city, town, development, major highway, or other populated area, the ambient air of which may be significantly affected by smoke, fly ash, or other air contaminants from the burning.
- (2) The location of the burning must be at least 500 feet from any dwelling or structure located in a predominately residential area other than a dwelling or structure located on the property on which the burning is conducted unless permission is granted by the occupants.
- (3) The amount of dirt or organic soil on or in the material to be burned must be minimized and the material arranged in a way suitable to facilitate rapid burning.
- (4) Burning may not be initiated when it is determined by a forest ranger, based on information supplied by a competent authority that stagnant air conditions or inversions exist or that such conditions may occur during the duration of the burn.
- (5) Heavy oils, asphaltic material, or items containing natural or synthetic rubber may not be used to ignite the material to be burned or to promote the burning of such material.
- (6) Initial burning may be commenced only between the hours of 8:00 A.M. and 4:00 P.M. and no combustible material may be added to the fire between 4:00 P.M. on one day and 8:00 A.M. on the following day, except that when favorable meteorological conditions exist, any forest ranger authorized to issue the permit may authorize in writing a deviation from the restrictions. (1981, c. 1100, s. 2; 1981 (Reg. Sess., 1982), c. 1165; c. 1385, s. 2; 2002-132, s. 1; 2011-145, ss. 13.25(w), (x); 2013-265, s. 15; 2017-108, s. 12(f).)

§ 106-943. Open burning in non-high hazard counties; permits required; standards.

(a) The provisions of this section apply only to the counties not designated as high hazard counties in G.S. 106-942(a).

(b) It shall be unlawful for any person to start or cause to be started any fire or ignite any material in any woodland under the protection of the Department or within 500 feet of any such woodland during the hours starting at midnight and ending at 4:00 P.M. without first obtaining a permit from the Department. Permits may be obtained from forest rangers or other agents authorized by the forest ranger to issue such permits in the county in which the fire is to be started. Such permits shall be issued by the ranger or other agent unless permits for the area in question have been prohibited or cancelled under G.S. 106-944 or G.S. 106-946. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-944. Open burning prohibited statewide.

During periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, the Commissioner is authorized to prohibit all open burning regardless of whether a permit is required under G.S. 106-942 or G.S. 106-943. The Commissioner shall issue a press release containing relevant details of the prohibition to news media serving the area affected. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-945. Permit conditions.

Permits issued under this Article shall be issued in the name of the person undertaking the burning and shall specify the specific area in which the burning is to occur, the type and amount of material to be burned, the duration of the permit, and such other factors as are necessary to identify the burning which is allowed under the permit. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w).)

§ 106-946. Permit suspension and cancellation.

Upon a determination that hazardous forest fire conditions exist the Commissioner is authorized to cancel any permit issued under this Article and suspend the issuance of any new permits. Upon a determination by the Environmental Management Commission or its agent that open burning permitted under this Article is causing significant contravention of ambient air quality standards or that an air pollution episode exists pursuant to Article 21B of Chapter 143 of the General Statutes, the Commissioner shall cancel any permits issued under authority of this Article and shall suspend the issuance of any new permits. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-947. Control of existing fires.

(a) If a fire is set without a permit required by G.S. 106-942, 106-943, or 106-944, and is set in an area in which permits are prohibited or cancelled at the time the fire is set, the person responsible for setting the fire or causing the fire to be set shall immediately extinguish the fire or take such other action as directed by any forest ranger authorized to issue permits under G.S. 106-942(c). In the event that the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(b) If a fire requiring a permit under G.S. 106-942(c) is set without a permit and a forest ranger authorized to issue such permits determines that a permit would not have been issued for the fire at the time it was set, the person responsible for setting the fire or causing the fire to be set shall immediately take such action as the forest ranger directs to extinguish or control the fire. In the event the person responsible does not immediately undertake efforts to extinguish the fire or take such other action as directed by the forest ranger, the Department may enter the property and take reasonable steps to extinguish or control the fire and the person responsible for setting the fire shall reimburse the Department for the expenses incurred by the Department. A showing that a fire is associated with land-clearing activities is prima facie evidence that the person undertaking the land clearing is responsible for setting the fire or causing the fire to be set.

(c) If a fire is set in accordance with a permit but the burning is taking place contrary to the conditions of the permit, any forest ranger with authority to issue permits in the area in question may order the permittee in writing to undertake the steps necessary to comply with the conditions of his permit. If the permittee is not making a reasonable effort to comply with the order, the forest ranger may enter the property and take reasonable steps to extinguish or control the fire and the

permittee shall reimburse the Department for the expenses incurred by the Department. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-948. Penalties.

Any person violating the provisions of this Article or of any permit issued under the authority of this Article shall be guilty of a Class 3 misdemeanor. It is not a violation of this Article or any permit issued under the authority of this Article if a person unintentionally fails to comply with a setback requirement so long as the difference between the required setback and the actual setback is no more than five percent (5%) of the required setback. The penalties imposed by this section shall be separate and apart and not in lieu of any civil or criminal penalties which may be imposed by G.S. 143-215.114A or G.S. 143-215.114B. The penalties imposed are also in addition to any liability the violator incurs as a result of actions taken by the Department under G.S. 106-947. (1981, c. 1100, s. 2; 1989 (Reg. Sess., 1990), c. 1045, s. 11; 1993, c. 539, s. 835; 1994, Ex. Sess., c. 24, s. 14(c); 2011-145, s. 13.25(w), (x); 2011-394, s. 2(h).)

§ 106-949. Effect on other laws.

This Article shall not be construed as affecting or abridging the lawful authority of local governments to pass ordinances relating to open burning within their boundaries. Nothing in this Article shall relieve any person from compliance with the provisions of Article 21B of Chapter 143 of the General Statutes and regulations adopted thereunder. In the event that permits are required for open burning associated with land clearing under the authority of Article 21B of Chapter 143 of the General Statutes, the authority to issue such permits shall be delegated to forest rangers who are authorized to issue permits under G.S. 106-942(c). (1981, c. 1100, s. 2; 2011-145, s. 13.25(w), (x).)

§ 106-950. Exempt fires; no permit fees.

(a) This Article does not apply to any fires started, or caused to be started, within 100 feet of an occupied dwelling house if the fire is confined (i) within an enclosure from which burning material may not escape or (ii) within a protected area upon which a watch is being maintained and which is provided with adequate fire protection equipment.

(a1) Except in cases where the Commissioner has prohibited all open burning during periods of hazardous forest fire conditions or during air pollution episodes declared pursuant to Article 21B of Chapter 143 of the General Statutes, this Article does not apply to, and no air quality permit shall be required for, the burning of polyethylene agricultural plastic used in connection with agricultural operations related to the growing, harvesting, or maintenance of crops, when all of the following conditions apply:

- (1) The burning does not violate any State or federal ambient air quality standards.
- (2) The burning is conducted between an hour after sunrise and an hour before sunset.
- (3) The fire is set back at least 250 feet from any paved public roadway and at least 500 feet from any dwelling, group of dwellings, commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted.
- (4) The burning is conducted in a manner such that it does not constitute a public nuisance.

- (5) The burning is conducted by any of the following means:
- a. By professionally manufactured equipment solely for the purpose of plastic mulch burning or incineration and approved by the Commissioner.
 - b. By a fire that is enclosed in a noncombustible container.
 - c. By a fire that is restricted to a pile no greater than eight feet in diameter built upon ground cleared of all combustible material.

(b) No charge shall be made for the granting of any permit required by this Article. (1981, c. 1100, s. 2; 2011-145, s. 13.25(w); 2015-286, s. 4.39(a); 2017-102, s. 15.2.)

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